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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,081	01/22/2004	Vijaylaxmi Chakravarty	AUS920030847US1	6414

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EXAMINER
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RAYYAN, SUSAN F

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/763,081	<b>Applicant(s)</b> CHAKRAVARTY ET AL.	
	<b>Examiner</b> Susan F. Rayyan	<b>Art Unit</b> 2167	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 22-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 26, 2007 has been entered.

2. Claims 1-21 are canceled.

3. Claims 22-42 are pending.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 22-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Regarding claims 22,29,36, the combination of limitations including "sending a request for a first file from a communication program" and specifically "in response to determining said predetermined length of time from when said request is sent expired , said communication program encapsulating said first file in a message transmission and sending said message transmission to a target address" is unclear how the

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communication programs encapsulates the first file when the first file has not been sent and received.

Regarding claims 23,30, 37 the limitation "displaying said first file in the said communication program" is indefinite as to how the first file is displayed when the file has not been sent and received.

Claim 22,29,36 recites the limitation "said predetermined length of time". There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 22-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Application Publication Number 2005/0071239 issued to Peter James Tormey et al ("Tormey") in view of US Application Publication Number 2004/0193900 A1 issued to Mark Nair ("Nair").**

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**As per claim 22** Tormey teaches:

sending a request for a first file from a communication program(paragraph 5, lines 7-9 and Figure 1A, Reference 20, as search using a web-based search engine and paragraph 43 lines 1-22 receiving a listing and paragraph 44, lines 1-2);

said communication program encapsulating said first file in a message transmission and sending said message transmission to a target address (paragraph 83 as e-mail response).

Tormey does not explicitly teach determining said predetermined length of time from when said request is sent has expired. Nair teaches choosing a method of delivery based on connection type. Video is sent immediately on a broadband connection or delivery is delayed and sent latter by a modem connection (paragraph 58). Clearly the selection of the delivery method is based on the amount of time to download a file to reduce bandwidth consumption during peak hours. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Tormey with "in response to determining a predetermined length of time from when said request is sent has expired" to reduce bandwidth consumption during peak hours as described by Nair (paragraph 58, lines 5-6).

**As per claim 23** same as claim arguments above and Tormey teaches:

displaying said first file in said communication program((paragraph 5, lines 7-9 and Figure 1A, as receiving search results and paragraph 43 lines 1-22 receiving a listing).

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Tormey does not explicitly teach determining said predetermined length of time from when said request is sent has not expired. Nair teaches choosing a method of delivery based on connection type. Video is sent immediately on a broadband connection or delivery is delayed and sent latter by a modem connection (paragraph 58). Clearly the selection of the delivery method is based on the amount of time to download a file to reduce bandwidth consumption during peak hours. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Tormey with "in response to determining a predetermined length of time from when said request is sent has not expired" to reduce bandwidth consumption during peak hours as described by Nair (paragraph 58, lines 5-6).

**As per claim 24** same as claim arguments above and Nair teaches:

responsive to said predetermined length of time expiring, detecting whether a user prefers to continue waiting for said first file (paragraph 45, lines 16-20 as dialup to download when requested by user).

**As per claim 25** same as claim arguments above and Tormey teaches:

designating a first email address as said target address (paragraph 78, user supplies e-mail address to supplier as a reply address).

**As per claim 26** same as claim arguments above and Tormey teaches:

designating a second email address as said target address (paragraph 78, user supplies e-mail address to supplier as a reply address).

**As per claim 27** same as claim arguments above and Nair teaches:

adjusting said predetermined length of time in response to a task priority of said communication program(paragraph 45, transmission time adjusted by user).

**As per claim 28** same as claim arguments above and Nair teaches:

temporarily and dynamically adjusting said predetermined length of time, in response to determining said communication program is deselected as a foreground task running on a data processing system (paragraph 45, lines 16-20 as automatically dial into connection at a latter time).

**As per independent claim 29** Tormey teaches:

means for sending a request for a first file from a communication program paragraph 5, lines 7-9 and Figure 1A, Reference 20, as search using a web-based search engine and paragraph 43 lines 1-22 receiving a listing and paragraph 44, lines 1-2);  
and means for encapsulating said first file in a message transmission by said communication program and sending said message transmission to a target address(paragraph 83 as e-mail response).

Tormey does not explicitly teach determining said predetermined length of time from when said request is sent has expired. Nair teaches choosing a method of delivery based on connection type. Video is sent immediately on a broadband connection or delivery is delayed and sent latter by a modem connection (paragraph 58). Clearly the

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selection of the delivery method is based on the amount of time to download a file to reduce bandwidth consumption during peak hours. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Tormey with "in response to determining a predetermined length of time from when said request is sent has expired" to reduce bandwidth consumption during peak hours as described by Nair (paragraph 58, lines 5-6).

**As per claim 30** same as claim arguments above and Tormey teaches:

means for displaying said first file in said communication program((paragraph 5, lines 7-9 and Figure 1A, as receiving search results and paragraph 43 lines 1-22 receiving a listing). Tormey does not explicitly teach determining said predetermined length of time from when said request is sent has not expired. Nair teaches choosing a method of delivery based on connection type. Video is sent immediately on a broadband connection or delivery is delayed and sent latter by a modem connection (paragraph 58). Clearly the selection of the delivery method is based on the amount of time to download a file to reduce bandwidth consumption during peak hours. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Tormey with "in response to determining a predetermined length of time from when said request is sent has not expired" to reduce bandwidth consumption during peak hours as described by Nair (paragraph 58, lines 5-6).



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**As per claim 31** same as claim arguments above and Nair teaches:

means for detecting whether a user prefers to continue waiting for said first file, responsive to said predetermined length of time expiring (paragraph 45, lines 16-20 as dialup to download when requested by user).

**As per claim 32** same as claim arguments above and Tormey teaches:

means for designating a first email address as said target address(paragraph 78, user supplies e-mail address to supplier as a reply address).

**As per claim 33** same as claim arguments above and Tormey teaches:

means for designating a second email address as said target address (paragraph 78, user supplies e-mail address to supplier as a reply address).

**As per claim 34** same as claim arguments above and Nair teaches:

means for adjusting said predetermined length of time in response to a task priority of said communication program(paragraph 45, transmission time adjusted by user).

**As per claim 35** same as claim arguments above and Nair teaches:

means for temporarily and dynamically adjusting said predetermined length of time, in response to determining said communication program is deselected as a foreground task running on a data processing system(paragraph 45, lines 16-20 as automatically dial into connection at a latter time).

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**As per independent claim 36** Tormey teaches:

sending a request for a first file from a communication program paragraph 5, lines 7-9 and Figure 1A, Reference 20, as search using a web-based search engine and paragraph 43 lines 1-22 receiving a listing and paragraph 44, lines 1-2);

encapsulating said first file in a message transmission by said communication program and sending said message transmission to a target address (paragraph 83 as e-mail response).

Tormey does not explicitly teach determining said predetermined length of time from when said request is sent has expired. Nair teaches choosing a method of delivery based on connection type. Video is sent immediately on a broadband connection or delivery is delayed and sent latter by a modem connection (paragraph 58). Clearly the selection of the delivery method is based on the amount of time to download a file to reduce bandwidth consumption during peak hours. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Tormey with "in response to determining a predetermined length of time from when said request is sent has expired" to reduce bandwidth consumption during peak hours as described by Nair (paragraph 58, lines 5-6).

**As per claim 37** same as claim arguments above and Tormey teaches:

means for displaying said first file in said communication program((paragraph 5, lines 7-9 and Figure 1A, as receiving search results and paragraph 43 lines 1-22 receiving a listing). Tormey does not explicitly teach determining said predetermined length of time

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from when said request is sent has not expired. Nair teaches choosing a method of delivery based on connection type. Video is sent immediately on a broadband connection or delivery is delayed and sent latter by a modem connection (paragraph 58). Clearly the selection of the delivery method is based on the amount of time to download a file to reduce bandwidth consumption during peak hours. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Tormey with "in response to determining a predetermined length of time from when said request is sent has not expired" to reduce bandwidth consumption during peak hours as described by Nair (paragraph 58, lines 5-6).

**As per claim 38** same as claim arguments above and Nair teaches:  
responsive to said predetermined length of time expiring, detecting whether a user prefers to continue waiting for said first file (paragraph 45, lines 16-20 as dialup to download when requested by user).

**As per claim 39** same as claim arguments above and Tormey teaches:  
designating a first email address as said target address (paragraph 78, user supplies e-mail address to supplier as a reply address).

**As per claim 40** same as claim arguments above and Tormey teaches:  
designating a second email address as said target address (paragraph 78, user supplies e-mail address to supplier as a reply address).

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**As per claim 41** same as claim arguments above and Nair teaches:

adjusting said predetermined length of time in response to a task priority of said communication program (paragraph 45, transmission time adjusted by user).

**As per claim 42** same as claim arguments above and Nair teaches:

temporarily and dynamically adjusting said predetermined length of time, in response to determining said communication program is deselected as a foreground task running on a data processing system(paragraph 45, lines 16-20 as automatically dial into connection at a latter time).

#### **Contact Information**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan F. Rayyan whose telephone number is 571-272-1675. The examiner can normally be reached on M-F, 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cottingham can be reached on 571-272-7079. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

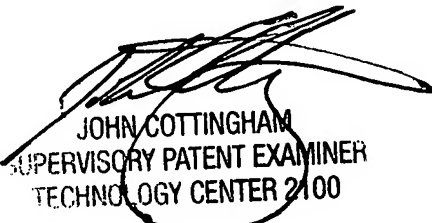
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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5/6/2007

  
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